

**Office of Administrative Hearings
Special Education Advisory Committee**

OAH Response to Recommendations from October 14, 2011 Meeting

The Office of Administrative Hearings (OAH) Special Education Advisory Committee met in a joint meeting on October 14, 2011, in Los Angeles and Sacramento. The meeting was conducted via videoconference and was also available to the public through a webcast accessed on OAH's website. The joint meeting followed one agenda. During the course of the meeting, the Committee voted to make several recommendations to change or improve OAH's processes. After reviewing and considering the recommendations, OAH provides this response:

Initial Scheduling Order Protocols

OAH proposed moving up the initial dates for mediations, prehearing conferences and hearing dates consistent with the legal requirement to resolve matters expeditiously. The Northern and Southern California sections recommended that the initial scheduling protocol not change for district-filed hearing-only and mediation and hearing matters. The Southern California section of the Committee recommended that OAH not change the initial scheduling protocols for any matter.

OAH adopted the recommendation of the Southern California section of the Committee and will not at this time change its initial scheduling protocols. After further consideration of the impact that the proposed changes would have on the calendar, it was determined that it would not significantly improve the expeditious resolution of matters. The scheduling protocols effectively schedule matters to allow for their resolution within the legally-mandated time lines. OAH will continue to consider other options to improve the administrative efficiency of scheduling matters.

Initial Continuance Protocol

OAH proposed that the maximum length of an initial continuance be shortened from 90 to 60 days. The Northern California section of the Committee supported OAH's proposal. OAH will determine how best to implement and inform all stakeholders of this change.

Impact of Continuance on Decision Timeline

OAH's current policy stops the timeline for a decision to be issued on the date the first continuance is granted in a matter. The timeline restarts on the first day of the hearing. The Northern California section recommended that if a continuance is granted at any time prior to the initial hearing date, the judge would have the same number of days to write the decision that the judge would have had if there had not had been a continuance.

Education Code section 56505, subdivision (f)(3) provides:

Either party to the hearing may request the [administrative law judge] to grant an extension. The extension shall be granted upon a showing of good cause. An extension shall extend the time for

rendering a final administrative decision for a period only equal to the length of the extension.

34 Code of Federal Regulations part 300.515(c) provides that an administrative law judge “may grant specific extensions of time beyond the [time period for a decision] at the request of either party.”

OAH declines to adopt this recommendation. Neither federal nor state law requires that OAH handle continuances as recommended. OAH’s continuance policy was reviewed by the United States Department of Education, Office of Special Education Programs and the California Department of Education in 2010 and found it complied with all applicable law.

OAH’s current practice is consistent with and effectively implements the law. Upon receiving a request for mediation, hearing, or both, OAH schedules dates for mediation, prehearing conference, and hearing so that a decision will be rendered within 45 days of filing for a district-filed matter, or within 45 days of the expiration of the 30-day resolution period, which is usually within 75 days of filing for a student-filed matter. If a party wishes to have the decision rendered within 45 or 75 days of filing, then the hearing shall begin on this initially-scheduled date and continue until it is completed. The 45-day time line starts with the day after filing for a district-filed matter and, unless otherwise provided by law, the day after the end of the resolution period for a student-filed matter, and continues unless a continuance is granted for the submission of written closing briefs. The time period during which the parties are writing briefs is not counted toward the 45-day deadline. The language of Education Code section 56505, subdivision (f)(3), that refers to extending “the time for rendering a final administrative decision for a period only equal to the length of the extension” is unambiguous, and can only be read as “tolling” the running of the 45-day timeline from the date the extension is granted until the date the hearing starts. Similarly, if parties ask for a continuance of the hearing to allow time for written closing briefs, the time for writing a decision is “tolled” until the closing briefs are submitted.

OAH Calendar Conflict and Good Cause for Continuance

Parties regularly seek continuances when they are scheduled for more than one hearing during the same week that start on different days. For example, one hearing may be scheduled for Tuesday and Wednesday and another hearing is scheduled for Wednesday and Thursday. A continuance is often requested for the second hearing well in advance of both hearings. Since 97 percent of cases are resolved without hearing, it is likely that as the hearing dates grow near, the scheduling conflict will resolve itself as one or both matters settle. This results in hearings being unnecessarily pushed into the future. OAH proposed that when a party has a conflict with two hearings scheduled during a week, the hearing that begins first will take priority. As a result, a calendar conflict by itself would not provide good cause for a continuance that is requested well in advance of the scheduled hearing dates.

The Northern California group recommended that OAH calendar a hearing for the number of consecutive days requested by the party that filed the complaint.

OAH declines to adopt this recommendation. OAH previously allowed a party to request multiple hearing days at the time the party filed a complaint. OAH stopped this practice because it did not result in any administrative efficiency. Since the overwhelming majority of cases settled or were continued shortly before the initial hearing date, multiple hearing days were reserved on the calendar that were not needed and were not available to schedule other matters. This made it more difficult to efficiently calendar and assign matters.